

Joint Stock Companies

1. Order of the Federal Service for Financial Markets on Approval of the Regulations on Additional Requirements to the Preparation, Convocation and Holding of the General Meeting of Shareholders Purported to Change the Procedure for Holding Annual and Extraordinary Meetings of Shareholders of Closed and Open Joint Stock Companies, dated February 2, 2012, No. 12-6/pz-n, has been promulgated.

The Regulations, *inter alia*, provide for an additional possibility to send proposals for the agenda and the demand to hold an extraordinary meeting by courier, and set a procedure for determination of the date of arrival of proposals and demands depending on the chosen means of their sending.

A joint stock company must hold a general meeting of shareholders at the place of its location or at any other place indicated exclusively in its charter (before the Order comes into force “any other place” may be indicated in the internal documents of the company).

Participation in the general meeting by managers of unit investment trusts and persons whose shares are circulating outside Russia in the form of depositary securities has certain specifics. For example, depositaries must notify the returning board of the number of shares with respect to which they received voting instructions. Shares with respect to which their owners gave no voting instructions are not counted for determination of quorum.

The rules concerning voting at the general meeting, determination of quorum, and counting of voices cast have been supplemented and made more specific. For example, quorum should be declared at the time of opening of the meeting and after discussion of the last item of the agenda but before the shareholders who have not yet voted begin to vote. The Regulations specify information which should be included in the minutes of the general meeting voting.

The provisions regulating the contents of the annual report proposed for approval by the general meeting have been excluded.

The Order will come into force six months after its publication. As of the same date, Regulations of the FCFM on Approval of the Regulations on Additional Requirements to the Preparation, Convocation and Holding of the General Meeting of Shareholders, dated May 31, 2002, No. 17/ps, will no longer apply.

2. Federal Law on Amendment of Article 84.2 of the Joint Stock Companies Law, dated June 14, 2012, No. 77-FZ.

The Law obligates the person that acquired over 30% of the total number of shares of an open joint stock company with regard for the shares owned by such person and its affiliate to send the holders of the other shares of the corresponding categories (types) and owners of securities convertible into such shares a public offer to acquire such securities. Article 84.2(8) of the Joint Stock Companies Law contains exclusions from the said rule. According to the amendments, such exclusions are supplemented by a free of charge transfer of shares between public-law formations. In particular, transfer from the federal ownership to the ownership of a RF constituent or municipal ownership, from the ownership of a RF constituent to federal or municipal ownership, from municipal ownership to federal ownership or the ownership of a RF constituent.

Notaries Public

Resolution of the RF Government on Approval of the List of Documents Whereunder Recovery of Debt is Effected Indisputably on the Basis of Executive Notations, dated June 1, 2012, No. 543.

According to the Resolution, with respect to a loan agreement (pledge ticket), the document required for indisputable recovery of debt on the basis of executive notations is the loan agreement (pledge ticket). With respect to a custody agreement – the custody agreement or the personalized custody receipt. With respect to a rent agreement – the rent agreement; a document confirming transfer of property from the lessor to the lessee; the calculation of the lessee's debt signed by the lessor, indicating the sums received from the debtor and the dates of receipt.

Tenders and Auctions

Explanations of the Federal Anti-Monopoly Service Regarding Application of Article 17.1 of the Competition Protection Law (as amended by Federal Law of December 6, 2011, No. FZ) and the Rules on Holding Tenders or Auctions for the Right to Enter into Lease Agreements, Free-of-Charge Use Agreements, Trust Agreements and other Agreements Stipulating Transfer of Rights in State or Municipal Property, approved by Order of the FAS No. 67 of February 10, 2010 (with regard for amendments introduced by Orders of the FAS No. 732 of October 20, 2011 and No. 203 of March 30, 2012), dated June 5, 2012.

In particular, the FAS explains that:

- Filing of an application for participation in a tender constitutes an acceptance of the offer in accordance with Article 438 of the Civil Code;
- A contract entered into after the tender less than 10 days from the date of publication of the tender results on the official site of the tender is void as inconsistent with Article 168 of the Civil Code;

- Execution of additional agreements purported to change the material terms and conditions of the contract without a tender is a violation of the Competition Protection Law because the said terms and conditions were agreed upon at the time of execution of the contract at the tender;
- Execution of contracts through tenders is possible exclusively with respect to the types of property approved by the FAS Order of February 10, 2010, No. 67.

Financial Monitoring

Decree of the RF President on the Issues of the Federal Service for Financial Monitoring, dated June 13m 2012, No. 808, came into force. The Decree approves the new Regulations on the Federal Service for Financial Monitoring.

According to the Regulations, the Federal Service for Financial Monitoring (Rosfinmonitoring) is a federal executive body whose function is to counteract legalization of illegal income and financing of terrorism, develop a state policy and issue legal rules and regulations in the area, and coordinate the corresponding activity of other federal executive bodies.

The Regulations pay special attention to the powers and organizational structure of the Rosfinmonitoring. In particular, it will perform new functions – will be a national center for assessment of threats to national security as the result of legalization (laundering) of illegal income. The activity of Rosfinmonitoring will be directed by the RF President (formerly, it was the RF Government).

Economic Partnerships

Order of the Federal Service for Financial Markets on the Bonds of Economic Entities Contributable to the Share Capital of an Economic Partnership, dated 19 April, 2012, No. 12-26/pz-n.

Federal Law on Economic Partnerships, dated December 3, 2011, No. 380-FZ, came into force on July 2012. The Order establishes that economic entities may contribute to the share capital of an economic partnership their bonds which have not matured and which meet at least one of the following requirements:

- The bonds are on the list of securities allowed for trading on a stock exchange or other organizer of trade in the securities market;
- An economic entity's bonds the nominal value of which together with the nominal value of other issued and circulating bonds of the same economic entity does not exceed the value of its charter capital;
- Bonds secured by pledge, surety, bank guarantee, state or municipal guarantee.

The Order is registered with the Ministry of Justice on June 9, 2012 and came into force on July 1, 2012.

Removal of Bankruptcy Receivers – Court Practice

Informative Letter of the Supreme Arbitration Court Presidium, dated May 22, 2012, No. 150, is entitled “Overview of the Practice of Consideration by Arbitration Courts of Disputes Over Removal of Bankruptcy Receivers”. Citing as an example certain court decisions, the Supreme Arbitration Court clarifies the issue of propriety of:

- Removal of a bankruptcy receiver in the absence of proofs confirming the exact amount of losses and in the actual absence of losses, if it has been established that the losses may have been caused by violations committed by the bankruptcy receiver. For removal of a bankruptcy receiver the very possibility of causing losses suffices, i.e., removal is possible even where losses have not been caused but could be caused;
- Joint consideration of the objection of a person involved in the bankruptcy proceedings against the actions of the receiver and the petition of such person for removal of the receiver. From Article 145(1) of the Bankruptcy Law it follows that the matter of satisfaction of the objection and the matter of removal may be considered in one court hearing;
- Dismissal of the petition for removal of the receiver on the ground that the minutes of the creditors’ meeting do not specify violations which were committed by the receiver and which served as a basis for the decision to apply to the court with the petition for removal of the receiver;
- Removal of the receiver on a request of persons involved in the bankruptcy proceedings without establishment of the fact of losses or the possibility of losses as the result of violations committed by the receiver.

Civil Process – Court Practice

1. Resolution of the Supreme Court Plenum on Application by Courts of the Procedural Law Rules Regulating Process in the Court of Appeals, dated 19 June, 2012, No. 13. issued in connection with introduction of changes in the Civil Code concerning a review by the appeal instance of judicial acts rendered by the first instance of common courts.

The Supreme Court draws the attention of courts to the fact that an appeal or a petition may be filed not only from the court’s judgment in general, but from its part, e.g., from the operating part or the reasons, concerning distribution of court expenses, security for execution of the judgment and other matters resolved by the court in the judgment.

Special attention is paid to the deadline for and manner of filing of an appeal. In particular, filing of an appeal or petition directly with the appeal instance (rather than through the court that rendered the judgment) does not serve as a ground for rejecting them. The Resolution discusses: determination of the deadline where the reasons of the judgment of the court of first instance are prepared after its operative part, and in some cases where an appeal is filed by post; consideration of the appeal and concurrently of the issue of reinstatement of the missed deadline; circumstances that may be regarded as a good reason

for missing the deadline for filing the appeal; grounds for stay of the appeal for correcting the mistakes of the filing.

The Supreme Court considers the actions of the appeal instance after the filing of an appeal or petition (appointment of several appeals for consideration in one case; withdrawal of the appeal before the court issues its ruling).

The Resolution defines the notion “the interests of law” with regard for which the court of appeal instance is entitled: to review the appealed judgment in full, going beyond the claims of the appeal; check the circumstances that allow regarding as good the reasons for which submission of new proofs to the court of first instance was impossible; check the violations committed by the court of first instance which cannot be regarded as formal and giving ground for dismissal of the appeal.

2. Overview of the Court Practice of the RF Supreme Court in the First Quarter of 2012, approved by the Supreme Court Presidium on June 20, 2012.

The Overview contains a selection of materials on civil, administrative and criminal cases, illustrating the conclusions of courts in disputable situations. In particular, a dispute over protection of consumer rights with respect to technically complicated products. The Supreme Court indicates that different deficiencies of the entire products found two or more times are understood as material deficiencies of a technically complicated product found several times. Each of the said deficiencies taken apart make the product inconsistent with the requirements set by the Preamble of the Consumer Rights Protection Law.

Special attention is paid to the matter of exercise of the right to apply to court and seek recovery of court expenses; e.g., an employee who has filed a claim based on the employment relationship may not be obligated to pay court expenses of his employer who has won the case.

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This newsletter is not intended to provide legal advice and/or any other form of legal assistance that may be rendered by attorney-at-law to client. The exclusive purpose of this review is to make aware its recipient of certain recent changes in Russian laws and regulations, and of the development of law application practice. Any use of the information contained herein for particular purposes may require more detailed case-specific explanations. Further information can be obtained via +7 (495) 933 75 67 or office@agp.ru



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